

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rachel Adler	Team: Squad #3	CCRB Case #: 201900267	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 01/06/2019 10:30 AM	Location of Incident: § 87(2)(b)	Precinct: 28	18 Mo. SOL 7/6/2020	EO SOL 2/20/2021	
Date/Time CV Reported Thu, 01/10/2019 9:59 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 01/10/2019 9:59 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. LT Bernarda Almeida	00000	933602	028 PCT
2. POM Terrance Marsh	04975	942127	028 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Tiara Jackson	12814	925506	028 PCT
2. POM Emre Guven	19460	959679	028 PCT
3. POM Mark Zajkowski	12478	965909	028 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Bernarda Almeida	Abuse: Lieutenant Bernarda Almeida entered § 87(2)(b) s apartment.	§ 87(2)(b)
B.LT Bernarda Almeida	Abuse: Lieutenant Bernarda Almeida forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)
C.POM Terrance Marsh	Abuse: PO Terrance Marsh damaged § 87(2)(b) s property.	§ 87(2)(b)

## Case Summary

On January 10, 2019, § 87(2)(b) filed this complaint over the phone with the CCRB.

On January 6, 2019, at approximately 10:30 A.M., § 87(2)(b) was at his home at § 87(2)(b) in Manhattan, when officers from the 28<sup>th</sup> Precinct, including PO Terrance Marsh and Lt. Bernarda Almeida, came to his door. The officers attempted to open § 87(2)(b)'s door using a key provided by the building's superintendent. Under Lt. Almeida's supervision, the officers then placed a rope and wedge tool underneath § 87(2)(b)'s front door to hold it open (**Allegation A: Abuse of Authority:** § 87(2)(g) and removed § 87(2)(b) to Mount Sinai Hospital in Manhattan (**Allegation B, Abuse of Authority:** § 87(2)(g). Additionally, while using the rope and wedge tool, PO Marsh allegedly damaged § 87(2)(b)'s front door (**Allegation C, Abuse of Authority:** § 87(2)(g). § 87(2)(b) was not arrested or given any summonses.

Body-worn camera (BWC) footage from the incident was obtained from Lt. Almeida and PO Marsh, as well as PO Emre Guven, PO Tiara Jackson, and PO Mark Zajkowski, all assigned to the 28<sup>th</sup> Precinct (**04-11 Board Review**).

## Findings and Recommendations

**Allegation (A) Abuse of Authority: Lieutenant Bernarda Almeida entered § 87(2)(b)'s apartment.**

**Allegation (B) Abuse of Authority: Lieutenant Bernarda Almeida forcibly removed § 87(2)(b) to the hospital.**

It is undisputed that on January 6, 2019, officers from the 28<sup>th</sup> precinct arrived at § 87(2)(b)'s apartment at approximately 10:30 A.M. and utilized a tool, identified by the investigation as a rope and wedge, to hold § 87(2)(b)'s front door open after he had opened it with the hotel lock affixed. It is further undisputed that § 87(2)(b) eventually allowed officers into his apartment, after which they removed him to § 87(2)(b) in Manhattan, accompanying him in the ambulance with Emergency Medical Services (EMS) personnel. It is also undisputed that § 87(2)(b) walked from his apartment to the ambulance with officers, who did not handcuff him, threaten to use force against him, or touch him.

In his testimony to the CCRB, § 87(2)(b) stated that he was at home on January 6, 2019, when the lieutenant and seven other officers from the 28<sup>th</sup> precinct knocked on his door with the intent of committing him as an emotionally disturbed person (**01 Board Review**). Although § 87(2)(b) had called 911 earlier because he had feared for his safety, he did not understand why the officers had come to his apartment and was crying “hysterically” when the officers were outside. When § 87(2)(b) cracked his door open, officers put the rope and wedge underneath it to hold it open. Ultimately, § 87(2)(b) allowed officers into his apartment. Lt. Almeida then told him that he needed to go to the hospital to be committed and that he told her he did not want to go.

NYPD police radio communication recordings and 911 call recordings from that date associated with Events #§ 87(2)(b) and #§ 87(2)(b) show that § 87(2)(b) called 911 five times. During these calls, § 87(2)(b) requested police and ambulance assistance because the residents of apartment § 87(2)(b) were injecting an unnamed male victim with unknown chemicals and the victim was not doing well. Additionally, § 87(2)(b) rambled and stated that officers from the 28<sup>th</sup> precinct were involved and were trying to cover up the crime. 911 dispatchers sent officers to § 87(2)(b)'s apartment building twice. The first time, officers were sent to apartment § 87(2)(b) with the information that someone was injecting another person, identified by the investigation as § 87(2)(b) with drugs (**02 Board Review**). The second time, the dispatcher sent officers to apartment § 87(2)(b) stating that the caller was possibly the same as the earlier one and involved § 87(2)(b) reporting that people were injecting him with some sort of chemical (**03 Board Review**).

PO Marsh testified that he had responded to a call at apartment § 87(2)(b) in the building earlier that day in which a caller reported that someone had been injected with drugs through the ceiling (**14 Board Review**). PO Marsh believed that the second caller was the same as the first because the

911 call-back number was the same. PO Marsh had also responded to similar calls from § 87(2)(b) and had removed him to the hospital prior to that day. He stated that he informed Lt. Almeida about this during the incident, although BWC footage does not show this. Lt. Almeida did not mention the prior incidents in her interview. Once they arrived at § 87(2)(b)'s apartment, § 87(2)(b) opened his door once and then closed it. Under Lt. Almeida's direction, PO Marsh then unlocked the door with a key provided by the building's superintendent, but § 87(2)(b) had affixed the door chain so the door would not fully open. PO Marsh then utilized a rope and wedge tool, initially at the bottom of the door and then inside the door, to prevent the door from being fully closed.

Lt. Almeida stated that before the officers arrived at § 87(2)(b)'s door, the building's superintendent told them that § 87(2)(b) had a history of mental health problems and was involved in a physical altercation two weeks earlier (**13 Board Review**). BWC footage from Lt. Almeida attached to IA 41 corroborates this, as at 5:09 in the video, it shows the superintendent stating that § 87(2)(b) is schizophrenic and had hit someone over the head with a coffee cup a few weeks earlier, causing the victim to bleed (**04 Board Review**).

Further, Lt. Almeida testified that when officers arrived at § 87(2)(b)'s apartment, § 87(2)(b) was scattered in his statements and told officers that he had been injected with an unknown substance four times (**13 Board Review**). It was at this point, that Lt. Almeida determined that § 87(2)(b) needed to go to the hospital, as she did not know what he had been injected with. According to Lt. Almeida's BWC footage attached to IA 41, when officers first speak to § 87(2)(b) at 9:55 in the video, he is visibly upset and shows officers his arm, stating that someone had been injecting him with drugs for four days. § 87(2)(b) then closes his door and can be heard yelling through the door, although his words are inaudible on the video (**04 Board Review**) and were inaudible to Lt. Almeida according to her testimony.

Lt. Almeida also stated that when § 87(2)(b) opened the door again later in the incident, PO Marsh utilized the rope and wedge tool to prevent § 87(2)(b) from fully closing the door (**13 Board Review**). PO Jackson's BWC footage, attached to IA 45, shows the initial entry with the rope and wedge tool (**08 Board Review**). At 26:20 in the video, PO Marsh pushes against § 87(2)(b)'s door, places a wedge at the bottom of it, and then throws his body against the door and kicks it several times. His foot and Lt. Almeida's foot can both be seen placed over the threshold of § 87(2)(b)'s door at 26:43 in the video. Marsh's BWC footage, attached to IA 47, shows PO Jackson's foot over the door's threshold and possibly resting on the wedge at 25:45 in the video (**07 Board Review**).

Lt. Almeida also testified that officers were ultimately able to negotiate with § 87(2)(b) and his mother, who was on the telephone, so that he willingly opened the door and allowed the officers into his apartment (**13 Board Review**). According to Lt. Almeida's BWC footage, which is attached to IA 42, officers gain entry into § 87(2)(b)'s apartment at 13:25 in the video by speaking calmly with him and then his mother on the telephone (**05 Board Review**). At 13:29 in the same video, § 87(2)(b) can be heard crying and talking to his mother, stating that the people upstairs are trying to kill him.

Lt. Almeida further testified that when she told § 87(2)(b) he needed to go to the hospital due to the injection with an unknown substance, he did not resist but rather got dressed on his own and was compliant while walking to the ambulance (**13 Board Review**). Her BWC footage attached to IA 42 corroborates this. § 87(2)(b) walks into his bedroom at 14:51 in the video, where he gets dressed without assistance (**05 Board Review**). He is then calm and compliant as he leaves the apartment, walks outside, and enters the ambulance. Twice more, at 15:23 and 17:01 in the video, the footage shows § 87(2)(b) stating that he is scared for his life and trying to get help, and Lt. Almeida assuring him that the ambulance would help him determine the substance with which he had been injected.

PO Marsh's BWC attached to IA 47 also shows § 87(2)(b) inside the ambulance, during which time at 15:05 in the video, he states a preference to be taken to § 87(2)(b) and then says, "Let's get going. I need this" (**07 Board Review**). While § 87(2)(b) is walking to the ambulance, according to Lt. Almeida's BWC attached to IA 42, she calls IAB and, at 21:29 in the

video, states that she has to send § 87(2)(b) to the hospital because “this is the second time today he called 911 regarding somebody injecting him” (05 Board Review). She also relays that the superintendent told her that § 87(2)(b) has a mental illness

PO Marsh completed an AIDED form for the removal to hospital, which stated that § 87(2)(b) was emotionally disturbed, had not threatened or harmed himself or others, and was under the suspected influence of an unknown narcotic (12 Board Review). Medical records from § 87(2)(b) note that § 87(2)(b) stated that he had used a stimulant four hours prior to his hospitalization, which had exacerbated his otherwise stable delusional system (15 Board Review). Further, the records note that § 87(2)(b) was at low risk of harming himself or others. § 87(2)(b) was discharged from the hospital approximately 1.5 hours after admission.

*People v Desmarat*, 38 AD3d 913 (2d Dept. 2007) clarifies the criteria comprising the emergency doctrine, which allows for warrantless entry of a premises by officers if they have reasonable grounds to believe there is an emergency at hand, an immediate need for their assistance in order to protect life, and a reasonable basis to associate the emergency with the place being entered (22 Board Review).

NYPD Patrol Guide Procedure 221-13 defines an emotionally disturbed person as a “person who appears to be mentally ill or temporarily or temporarily deranged” who must be taken into protective custody if officers reasonably believe that the person is likely to injure themselves or others (19 Board Review). The procedure notes that officers should attempt to slow the pace of the incident, establish dialogue with the emotionally disturbed person while awaiting specialized personnel, have the emotionally disturbed person removed to a hospital by ambulance, and ride in the body of the ambulance with the emotionally disturbed person.

NYPD Patrol Guide Procedure 216-01 regards any person other than a prisoner who requires medical aid or assistance due to sickness or injury (18 Board Review). In such cases, procedure states that officers should render reasonable aid to the sick or injured person and request an ambulance or doctor, as necessary.

NYPD Patrol Guide Procedure 216-08 regards an aided person who is suffering from the ingestion of drugs or poisonous substances, or the inhalation of gas (17 Board Review). Procedure states that officers should call an ambulance and give the ambulance attendants information regarding the nature of the poisoning.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (C) Abuse of Authority: Police Officer Terrance Marsh damaged § 87(2)(b)'s apartment door.**

As noted in the previous section, it is undisputed that officers utilized a rope and wedge tool to hold § 87(2)(b)'s door open after he opened it slightly with the hotel lock engaged.

In his verified statement to the CCRB, § 87(2)(b) stated that officers had damaged his door when they placed the wedge tool underneath it, which bent it so that it was difficult to open or close afterward (**01 Board Review**). In his statement to the CCRB, PO Marsh stated that he had received specialized training for the tool shortly before the incident date (**14 Board Review**). As noted in the previous section, PO Marsh also testified that he initially placed the tool at the bottom of the door and then inside the door. PO Marsh did not notice any damage to the door during the incident, did not believe that a rope and wedge could cause damage to doors, and did not recall § 87(2)(b) stating that his door had been damaged during the incident. In her testimony to the CCRB, Lt. Almeida stated that she was uncertain if the tool had caused any damage to § 87(2)(b)'s door (**13 Board Review**).

Lt. Almeida's BWC footage attached to IA 42 shows an officer trying to close the door at 18:02 in the video. The officer encounters some difficulty when trying to close the door and Lt. Almeida states that the frame might have been damaged, and they might have to do "a city involved." Lt. Almeida then tells the officer that they have to slam the door to shut it and he successfully closes and locks the door. At 19:00 in the same video, § 87(2)(b) is standing facing his door while officers close and lock it and Lt. Almeida states that there is nothing wrong with the door, which can be locked. § 87(2)(b) makes no comments to the contrary about the door.

As noted in the previous section, PO Marsh's BWC footage attached to IA 46 shows PO Jackson holding the door open with her foot at 25:43 in the video. Her foot appears to be resting on something, though it is unclear if that is the wedge (**06 Board Review**). PO Guven's BWC footage from IA 44 more clearly shows an unidentified officer removing the tool from the bottom of the door at 6:06 in the video (**10 Board Review**). PO Jackson's, PO Marsh's, and PO Zajkowski's BWC footage from IAs 45, 47, and 48, respectively, also show an unidentified officer locking § 87(2)(b)'s door without any issues (**07, 08, 11 Board Review**). Additionally, PO Jackson's BWC footage attached to IA 45 shows § 87(2)(b)'s closed front door from a distance of approximately five to 10 feet at 35:25 in the video (**08 Board Review**). None of the BWC footage of § 87(2)(b)'s door shows any obvious damage.

§ 87(2)(g)

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**20 Board Review**).
- Lt. Almeida has been a member of service for 15 years. This is the first CCRB complaint to which she has been a party.
- PO Marsh has been a member of service for 13 years. This is the first CCRB complaint to which he has been a party.

### **Mediation, Civil and Criminal Histories**

- This case was not suitable for mediation.
- On January 3, 2020, a request to determine if a Notice of Claim was filed was submitted; confirmation from the Office of the New York City Comptroller will be forwarded upon receipt (**16 Board Review**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

---

Squad No.: 3

Investigator: \_\_\_\_\_

Signature	Investigator Rachel Adler	1/9/2020
	Print Title & Name	Date

Squad Leader: \_\_\_\_\_

Signature	Print Title & Name	Date
-----------	--------------------	------

Reviewer: \_\_\_\_\_

Signature	Print Title & Name	Date
-----------	--------------------	------